IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.323 of 1997

T.Kasinathan .. Appellant[Plaintiff].

vs.

The Special Offier,
Sri Petharanaswmy,
Sri Mariamman Sri Poonkaliamman Devastanam,
Keezhavanjoor T.R.Patinam
having office at
Deputy Thasildar Taluk Office,
Town and Munsirfi, Pondicherry .. Respondent[Defendant].

Prayer: This second appeal has been preferred under Section 100 of CPC against the decree and judgment dated 25.11.1996, in A.S.No.2/1996 on the file of the Additional District Judge, Pondicherry at Karaikkal, reversing the decree and judgment in O.S.No.165/1995, dated 25.10.1995 on the file of the Principal District Munsif, Karaikkal.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr.K.K.Sasidharan, Mr.T.Murugesan,
Govt. Pleader, Pondicherry

JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.2/1996 on the file of the Court of the Additional District Judge, Pondicherry at karaikkal. The plaintiff, who has won the case before the trial Court but lost the same before the first appellate Court, is the appellant herein.

2. The short facts in the plaint which are relevant for the purpose of deciding this appeal are as follows:-

The suit is for permanent injunction. The plaintiff is the statutory tenant under the defendant under the lease agreement which was entered into between the plaintiff and the Special Officer of the said Temple on 22.8.1991 for a period of two years. An he had also paid a sum of Rs.1,200/- for the said period, the plaintiff has raised a fence surrounding the suit property. Subsequently, a registered lease agreement

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was entered into on 1.4.1992 between the plaintiff and the then Special Officer of the said Devasthanam. The defendant had received a sum of Rs.800/- towards advance. And the monthly rent agreed was Rs.200/- and under the said lease agreement the plaintiff was permitted to manufacture windows and other works with in cement. Under the lease deed the plaintiff was permitted to raise a temporary structure for the said purpose. The plaintiff continues in possession of the suit property even after expiry of the lease deed till today. The then Special Officer by name Singaravelu died on 29.9.1993 and the present Special Officer had taken charge during June, 1994. When the defendant was approached by the plaintiff to pay the rents for the suit property the same was refused without any sufficient reason. The plaintiff then issued a lawyer's notice on 8.7.1994 along with demand draft for Rs.2,000/- which is the rent for the period September-1993 to June-1994. The defendant received the notice and also the demand draft. On 3.7.1994 the defendant had auctioned the properties belonging to the Devesthanam in Mela Vanjoor village excepting the suit property. Subsequently, the plaintiff approached the defendant for paying rents for the month of July 1994 the defendant refused to receive the same. But on 12.10.1994 the defendant had chosen to issue circular dated 12.10.1994 claiming that the plaintiff had encroached on the suit property. In which he had admitted the lease deed executed by his predecessor. A lawyer's notice was issued on 27.10.1994 stating all the facts along with demand draft for a sum of Rs.600/- being the monthly rent for the period July to September. The defendant received this demand draft also. The plaintiff had taken water connection and electricity connection to the suit property. He had been regularly paying the taxes in respect of the same. Thereafter the defendant has issued a lawyer's notice on 22.12.1994. The defendant on 26.2.1995 came to the suit property along with some henchmen and attempted to dispossess the plaintiff. The plaintiff has also stored properties worth about Rs.40,000/- in the suit property and had also raised a temporary structure woth about Rs.5,000/- in the suit property.

3. In the written statement the defendant would contend as follows:

The plaintiff is a lessee under the Devasthanam under a lease deed dated 1.4.1992 for a period of two years. The said lease deed has been registered on 2.4.1992. The monthly rent agreed is Rs.200/- and it is also true that an advance amount of Rs.800/- was paid by the plaintiff. Under the said lease agreement the defendant's devasthanam can evict the plaintiff after giving three months notice if the suit property is required for the administration of the temple. The plaintiff is not a statutory tenant in respect of the suit property. He has no right to raise a super structure. The suit property was leased only for the purpose of manufacturing articles with cement. Once the lease period is over the plaintiff has to vacate the suit property and therefore his possession of the suit property is a wrongful one. It is true a demand draft for Rs.2,000/- was issued along with notice dated 8.7.1994 by the plaintiff and the defendant had received the same and had credited the said amount towards rental arrears. The defendant's devasthanam had

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auctioned properties only at Keelavanjoor village and the suit property was not auctioned since there is a proposal to raise a Kalyanamandapam in the said place. Further the lease deed had expired by 31.3.1994 itself therefore the plaintiff cannot continue to be in possession of the same. Therefore the circular issued on 1.4.1994 is in order. It is true that the defendant had received the notice dated 27.10.1994 along with a demand draft for Rs.6,000/-. The defendant never attempted to evict the plaintiff by wrongful method. Under the above circumstances, the suit is liable to be dismissed. The suit is bad for non issuance of notice under Section 80 of CPC.

4. On the above pleadings the learned trial Judge has framed five issues. On the side of the plaintiff, plaintiff has examined himself as P.W.1 and marked Ex.A.1 to A.9. The defendant has examined himself as D.W.1 and no exhibits were marked on the his side.

5. After going through the oral and documentary evidence available on record the learned trial Judge has decreed the suit thereby passed an order of permanent injunction with a direction that except being evicted under due process of law. Aggrieved by the findings of the learned trial Judge, the defendant preferred an appeal in A.S.No.2/1996 on the file of the Court of Additional District Judge, Pondicherry, Karaikal. The first appellate Court has allowed the appeal thereby setting aside the decree and judgment in O.S.N.165/1995. Hence the plaintiff has preferred this second appeal.

6. The substantial questions of law involved in this second appeal are as follows:-

i) Was the Lower appellate Court justified in holding that Exhibit.A1 was unenforceable and not acted upon after having observed that the truth and enforceability of Ex.A.1 being a registered lease deed was not questioned by the defendant and when there was no pleading specifically in the written statement filed by the defendant questioning the validity of Ex.A.1?

ii) Was the Lower Appellate Court correct in considering the earlier auction alone for dismissing the suit regardless of the subsequent agreement entered into between the parties as per Ex.A.1?

iii) Whether the dismissal of suit by the Lower Appellate Court ignoring Ex.A.1 admittedly executed between the parties was tenable?

iv) Whether the appellant can be dispossessed without due process of law?

v) Whether the decree and judgment of the lower appellate Court are liable to be set aside for not considering the relevant evidence available on record?

vi) Whether notice under Section 80 of CPC is necessary before filing the suit against a temple represented by Special Officer?

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7. The Points:-

7(a) The learned Government Pleader appearing for the respondent would confined his argument only to Ex.A.1 & A.2. The learned Government Pleader would contend that the suit property admittedly belongs to Poonkaliamman Devasthanam and that it is a public property and the plaintiff is a lessee under the temple and in the public auction held on 1.8.1991 the suit property was leased out in favour of the plaintiff/appellant for a period of two years that is till 31.7.1993 and that the lease has come to an end by efflux of time and there is no need for issuing a notice under Section 106 or 116 of the Transfer of Property Act. The learned Government Pleader would further contend that under Ex.A.1-lease agreement, the plaintiff cannot claim any right because the lease is subsisting during 1.4.1992 and hence the plaintiff under Ex.A.1 cannot claim lease hold right or possession in respect of the suit property for another period of two years from 1.4.1992 as per Ex.A.1. Ex.A.2 is the notice. The respondent has not filed any lease agreement or any other document related to the public auction said to have been conducted on 1.8.1991 which ended in his(plaintiff) favour.

7(b) According to the plaintiff in pursuance of Ex.A.1 subsequent rents have been received by the defendant thereby recognizing the plaintiff's possession in respect of the suit property.

7(c) P.W.1 in his evidence would contend that he tendered the rent through drafts, but those drafts under Ex.A.7 to A9 were returned by the defendant. According to the plaintiff he is in legal possession of the property under Ex.A.1 and that even after the tenancy period is over he is in possession of the suit property as a tenant holding over. The defendant is the Special Officer of the Temple(defendant). He would admit that there was an agreement entered into between the plaintiff and his predecessor who was working as a Special Officer in the temple-defendant and that as per Ex.A.1 the period of lease is only for two years and the suit property was leased out to the plaintiff for doing cement work in the said place. According to D.W.1, the plaintiff was in arrears of payment of rent and that the defendant has not making any attempt to dispossess the plaintiff. In the cross-examination he would admit that his predecessor viz. Special Officer died and no one was appointed to hold the additional charge of Special Officer to collect the rent for the period of eight months and that he took charge only in July 1994 and that Ex.A.5 is the letter sent by him(D.W.1) demanding payment of rent for seven months. But P.W.1 did not approach him to pay the rent. He would depose that he had received the rent and credited the same towards the arrears of rent.

7(d) The learned Government Pleader relying on (2006) 1 SCC 228 (C.Albert Morris Vs. K.Chandrasekaran and others) and contended that the mere fact that the land lord received the rent will not amount to renewal of the lease. The short facts of the said case are as follows:-

> "The appellant was running a retail outlet of petrol as a dealer of Respondent 2 Hindustan Petroleum Corporation Ltd., on a site obtained on lease from Respondent 1. The lease was for a period of ten years and the purpose of the lease as mentioned in

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the lease deed was the running of a petrol bunker. The Government of Pondicerry had granted no-objection certificate under Rule 144(1) of the Petroleum Rules, 1976 for the installation of retail outlet of petrol and HSD on that site. During the currency of the lease, Respondent 1 filed an eviction suit against the appellant but later withdrew the same with liberty to file a fresh suit. After the expiry of the lease period, Respondent 1 issued a notice to the appellant determining the lease and demanding possession of the site. A few months later, Respondent 1 approached the licensing authority seeking cancellation of the permission granted to the appellant for the storage of petroleum. He also approached the district authorities seeking to revoke the no-objection certificate. Meanwhile Respondent 1 filed a writ petition before the High Court seeking a direction that the licence of the appellant to carry on the petrol bunk should not be renewed. His contention was that the appellant had lost his right to the site and hence the licence was liable to be cancelled under Rule 153(1) of the Petroleum Rules, 1976. The writ petition was allowed by a Single Judge and the writ appeal was dismissed by a Division Bench.

Hence the appellant moved the Honourable Apex Court, wherein it has been held as follows:-

> We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession."

7(e) The learned Government Pleader relied on AIR 1981 SC 1550 (Smt.Shanti Devi Vs. Amal Kumar Banerjee) and contended that no notice has contemplated under Section 106 of the Transfer of Property Act, 1882, is necessary, in a case where the lease period has expired by efflux of time if there is no allegation of tenant holding over. The learned Government Pleader further contended that a notice under Section 106 is not necessary for determination of lease where the lease is for a definite term it expires by efflux of time by reason of 111(a) of the Transfer of Property Act. The short facts of the above said case are as follows:

> "By an indenture of lease dated March 19,1956, the appellant who was the plaintiff, demised a cinema theatre known as 'Shanti House' situate at Sainthia under Anchal Panchayat in district Birbhum, to the respondent-defendant for a term of four years with a covenant of two renewals of three years each. The lease of this cinema theatre was to commence from the date on which the defendant was able to procure a licence. On May 2, 1970, the plaintiff brought a suit for ejectment on the ground that the lease had expired by efflux of time and also pleaded in

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the alternative that he had sent a notice dated April 3, 1970 to the defendant both at his Calcutta address and at his Sainthia address determining the tenancy with the expiry of the month of April, 1970. The defendant contested the plaintiff's claim on various grounds. The defendant pleaded, inter alia, that no notice under Section 106 of the Transfer of Property Act having been served upon him, the suit was not maintainable. The High Court and the Courts below have confined their attention to the question whether any valid quit notice had been served on the defendant without entering into the controversy whether such a notice was necessary or not. Both the learned Subordinate Judge as well as the learned District Judge, upheld the plaintiff's claim that the lease had been validly determined by service of a quit notice and accordingly decreed his suit. The High Court, however, reversed the decision of theirs holding that service of a notice under Section 106 of the Transfer of Property Act on the defendant had not been proved and therefore, held that the plaintiff's suit for ejectment was not maintainable.

There can be no doubt that the High Court and the Courts below have without applying their mind as to the question whether Section 106 of the Transfer of Property Act was applicable or not proceeded to deal with the question as to the validity of the notice, on the assumption that the lease was a lease from month to month. They have completely overlooked the fact that the lease was for a term of four years with a covenant for renewal for two terms of three years each, i.e., a lease for a definite duration of ten years.

The Courts below have apparently been misled by the averments in paragraph 3 of the plaint that because the defendant could not fulfil the condition regarding obtaining of a licence, the grant made by the indenture of lease did not and could not take effect as also that in paragraph 7 that the tenancy of lease was from month to month. The parties could not by their pleadings alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. The lease was a lease for a definite term and, therefor, expired by efflux of time by reason of S.111(a) of the Transfer of Property Act. That being so, the service of a notice under Section 106 of the Transfer of Property Act was not necessary.

Undoubtedly, Section 111(a) of the Transfer of Property Act, which deals with determination of a lease by efflux of time, has to be read with Section 116 of the Act. But in the present case there is no allegation by the defendant that he was a tenant holding over within the meaning of Section 116 of the Act. Now, in order that a lease should be deemed to have been continued in favour of the defendant it was necessary to show that he remained in possession of the premises demised after the

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determination of the lease granted to him and the plaintiff had expressly or by necessary implication assented to his continued possession. "

The plaintiff in the plaint has not specifically pleaded that he is tenant holding over. But the case of the plaintiff is that in pursuance of Ex.A.1-registered lease agreement dated 1.4.1992 he is in continuous possession of the suit property. Under such circumstances as contended by the learned Government Pleader for the respondent, as laid down in the above dictum, it cannot be said that the defence set up by the defendant that there is no notice under Section 106 of the Transfer of Property Act is necessary in a case like this where the tenancy has come to an end by efflux of time as per section 111(a) of the Transfer of Property Act.

7(f) The learned Government Pleader relying on AIR 2005 MADRAS 264 (DCW Ltd., Vs. The State of Tamil Nadu and others), contended that in respect of the public land a lease shall be only by public auction and not by any other mode. The short facts of the above said case are as follows:-

"The State of Tamil Nadu had originally leased out a vast area of land to M/s.Wimco Limited measuring 28.765 acres of swamp and promboke lands in Vedaranyam Taluk. Nagapattinam District and Thiruthuraipoondi Taluk. Thanjavur District by G.O.Ms.No.625 Revenue, Dated 14.2.1863. The lease was for a period of 40 years commencing from 1963 and ending in 2003 for the purpose of manufacture of salt for use in the factory to be set up. M/s.Wimco Limited surrendered a major portion of the land of 16.500 acres to the first respondent. Thereafter, by a G.O. the first respondent ordered resumption of unutilised land measuring 9044.47 acres leaving a balance of 3185.53 acres for utilization by M/s.Wimco Limited for setting up of a factory for the manufacture of salt and its by-products. Since M/s.Wimco Limited found its enterprise not giving adequate income it had sought permission of the first respondent/State of Tamil Nadu for transferring the leasehold rights over the salt lands to the petitioner herein. M/s.Wimco Limited filed an application in the year 1990 requesting the first respondent to consider its request for transfer of its leasehold rights over the salt lands in favour of the petitioner herein. The first respondent by G.O.Ms.No.603, Revenue, dated 15.4.1991 permitted the petitioner, a major producer of salt, to take over the leasehold rights and passed necessary orders.

Pursuant to the above G.O. leasehold rights was transferred in favour of the petitioner from M/s.Wimco Limited. The first respondent fixed the period of lease as 12 years as per the orders issued in G.O.Ms.No.1106, Revenue, dated 13.6.1988 and the lease rent was fixed at Rs.2/- per acre per annum and the maximum royalty was fixed at Rs.25/- per acre per annum. Pursuant to the aforesaid G.O.Ms.No.603 dated 15.4.1991 the State Government permitted the transfer of the leasehold rights from M/s.Wimco Limited to the petitioner, and an Indenture of lease dated 13th May 1991 was executed between the State of Tamil

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Nadu/first respondent and the petitionr covering 3185.53 acres of land in Vedaranyam Taluk under Survey No.193 at village kandinayayal, Survey No.143 at village Ayakkarambulam and Survey No.193 at Village Pannal. In terms of the decision of the Government in G.O.Ms.No.1106 dated 18th June 1998, the said lease was to be valid for a period of 12 years expiring on 31st March 2003.

The lease came to an end on 31 March, 2003. The petitioner applied to the District Collector, Nagapattinam, for renewal of the said lease in his favour for a further period of 40 years. Despite payment of the entire demand, the Government did not take any action for renewal of the lease amount. By letter dat 6.10.2003, the petitioner addressed a letter to the second respondent requesting him to renew the lease in favour of the petitioner for a further period of 20 year. It is alleged that on 23.10.2003, the Tahildar, Vedaranyam raised a demand for Rs.1,18,08,849/- alleging that the same was the balance amount due from the petitioner towards rent and roylty and threatened to repossess the land and take revenue recovery proceedings against the petitioner if the amount was not repaid with immediate effect. The petitioner came forward to pay the above amount without prejudice to the rival claims in W.P.No.29539 of 2003. On payment of the above said amount, this Court passed an order restraining the respondents from repossessing the land. Despite payment of the lease amount, the application of the petitioner for extension of lease is still pending. Hence, the petitioner knocked at the doors of the High Court Madras, wherein it has been held as follows:-

> "It is well settled in the aforesaid decisions that property belonging to the Government or an instrumentality of the State is not private property, and hence it cannot be disposed off at the sweet will of the authorities in any manner they choose. Such property can only be given by the State or instrumentality of State ordinarily through public auction/public tender as held in Selvarani's case [2005(1) CTC 81]. Public property is not largesse which can be given by the Government to anybody. Since the appellant was given the grant only as temporary occupation for a period of twelve years, they cannot insist that the grant be continued even after twelve years as of right. If the appellant has made any investment on the said land they should have realized that after twelve years they have to vacate the land, and it is not that they have a right to continue in possession of the land till eternity. The appellant has no monopoly over the said land, which belongs to the Government. After expiry of the lease the public property should be put to public auction/public tender after advertising it in wellknown newspapers having wide circulation, so that

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there is transparency in the matter and all eligible persons can apply. In this way, Article 14 of the Constitution of India will be complied with, otherwise it will be violated.

We are surprised that although the grant in favour of the appellant expired about two years ago. The appellant has till continued in possession of the said land, which was wholly illegal and unauthorized. The appellant has been in occupation of the land in question illegally after the grant had expired about two years ago. The appellant should have vacated the land on the expiry of the period of the grant and should not have continued in occupation thereof, thereafter. It may be mentioned that the indenture deed dated 13.5.1991 itself states that the grant is for 'temporary occupation'. Surely the word 'temporary' does not mean 'permanent'. . . . . Once a contract has been granted for a specific period, then on the expiry of that period there is no question of automatic renewal of the grant (unless permitted by the deed of grant itself), and there must be a fresh public auction/public tender after which alone a fresh grant can be given, otherwise article 14 of the Constitution will be violated, and a monopoly may be created. If it is held that even if the period of the contract has expired there can be automatic and unilateral extension of the contract then logically it would mean that a contract can go on for term after term and can be extended for 100 years or even more. This would create a monopoly in favour of a party, which would be violative of Article 19(1)(g) of the Constitution, vide State of Rajasthan Vs. Mohnalal Vyas (AIR 1971 SC 2068) (vide paragraphs 6 & 7). It would also, be against the interest of the State because in a public auction the State may get a higher amount of royalty for the grant. In fact granting such extension creates an impression that there is some collusion between the grantee and the authorities. There should be transparency in such matters, otherwise public confidence will be shaken.

Ultimately it has been held that the petitioner has no right to continue his possession and it has been further directed that the public property shall be put to public auction/public tender."

7(g) The learned Government Pleader relying on 2005(2) LW 355 (M/s.Hinustan Petroleum Corporation Ltd. Vs. Devraj Chordia and others), contended that after the expiry of a lease period the leasee has no right to continue in possession. The relevant observation in the above said judgment runs as follows:-

"One would have expected that after 1989 the appellant herein like an honourable person would have vacated the suit property since its leasehold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is

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that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now become rampant in our country and the time has come when it must be curbed. An honourable person should vacate the property over which his lease or licence has expired and hand over possession of the same on the date of expiry of the lease or licence to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a Public Sector Undertaking has behaved in this manner. In this country the rule of law prevails and Public Sector Undertakings are subordinate to law and not above the law. In this case, the appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified."

7(h) The learned Government Advocate of the respondent in support of his contentioned that in a case of lease which come to an end due to efflux of time there is no necessity to issue a notice under Section 106 of the Transfer of Property Act, relied on a dictum in 2001(1) MLJ 777 (Thulasibalan and another Vs. Rajesh), wherein it has been held as follows:-

"Ultimately, when once the period of lease agreed upon by the parties has come to an end, a a new lease can come about only if the parties thereto agree to such renewal. While the payment and acceptance of rents may be one of the factors to prove the creation of a new lease that factor will not amount to a renewal. There must be indicators in the conduct of the parties which show that there was an offer to renew the lease by one party and assent to such renewal on the side of the other. Without such an offer and an implied or explicit acceptance the new contract of lease cannot be held to have been created."

7(i) The learned counsel appearing for the appellant relying on 1997(3) SCC 169 (Anamallai Club Vs. Government of Tamil Nadu and others), contended that only under Ex.A.1 the plaintiff is in possession of the plaint schedule property and hence he can be evicted under due process of law. The exact observation of the Honourable Apex Court in the above said case runs as follow:-

"It was open to the State to take appropriate legal action for the purpose. It was also held that the State could not remove them reiterated by this Court in State of UP Vs. Maharaja Dharamander Prasad Singh [1989 (2) SCC 505] thus:

"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression

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're-entry' in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be is possessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of government and Governmental authorities should have a 'legal pedigree". In Bishan Das Vs. State of Punjab [1962 (2) SCR 69 : AIR 1961 SC 1570] this Court said:

> We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order .....

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in manner known to or recognized by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law."

In Lallu Yeshwant Singh Vs. Rao Jagdish Singh [1968 (2) SCR 203 : AIR 1968 SC 620] a Bench of this Court had considered the same question after reviewing the case-law in that behalf and held that the Government cannot take possession of the land except in accordance with the procedure prescribed under the Act. In that case, recourse to the provisions under Section 9 of the Specific Relief Act (Section 6 of the present Specific Relief Act, 1963) was upheld. The question was also considered by this Court by one us(K.Ramaswamy, J.) in East India Hotels Ltd. V. syndicate Bank) [1992 Supp (2) SCC 29]. It was held in that case as follows:

> They must obtain such possession as they are entitled to by proper course. In our jurisprudence governed by rule of law even an unauthorised occupant can be ejected only in the manner provided by law. The remedy under Section 6 is summary and its object is to prevent self-help and to discourage people to adopt any means fair or foul to dispossess a person unless dispossession was in due course of law or with consent."

What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure established by law under such safeguards for the protection of

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individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a tribunal competent by its constitution, that is by law of its creation, to pass upon the subject-matter of the suit or proceedings; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right determination of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense."

7 (j) From the above discussion I am of the considered view that even though the plaintiff is not entitled to any relief by way of an order of injunction as righty held by the learned first appellate Court in A.S.No.2/1996 on the file of the Court of Additional District Judge, Pondicherry, Karaikal, the plaintiff's possession in respect of the suit property can be dispossessed only under due process of law. Points are answered accordingly.

8. In the result, the second appeal is dismissed, confirming the decree and judgment in A.S.No.2/1996 on the file of the Additional District Judge, Pondicherry at Karaikkal, with a direction that the appellant shall not be dispossessed from the suit property except under due process of law. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

SSV

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To,
1. The Addl. District Judge, Pondicherry at Karaikal.

2. The Principal District Munsif, karaikal.

3. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC To Mr. Srinath Sridevan, Advocate SR NO. 5914

+ 1 CC To Senior Govt. Pleader Pondicherry SR NO.5255

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